**ESSIEN IBOK ESSIEN**

**V**

**THE STATE**

SUPREME COURT OF NIGERIA

23RD DAY OF JUNE 2017

SC. 256/2015

**LEX (2017) - SC.256/2015**

OTHER CITATIONS

2PLR/2017/114 (SC)

**BEFORE THEIR LORDSHIP**

OLABODE RHODES-VIVOUR, JSC (Presided)

MUSA DATTIJO MUHAMMAD, JSC (Read the Lead Judgment)

CHIMA CENTUS NWEZE, JSC

AMIRU SANUSI, JSC

PAUL ADAMU GALINJE, JSC

**BETWEEN**

ESSIEN IBOK ESSIEN – Appellant

AND

THE STATE – Respondent

**ORIGINATING COURT**

1. COURT OF APPEAL, CALABAR JUDICIAL DIVISION

2. AKWA IBOM STATE ROBBERY AND FIREARMS TRIBUNAL, SITTING AT IKOT EKPENE

**REPRESENTATION/LAWYERS**

ARNOLD USHIADI with CHRISTIANA ALI and DEINMA KALAMA - for the Appellant

UWEMEDIMO NWOKO (HAG AKS) with UDUAK EYONSA (DPP AKS) and GODWIN UDOM (SSC AKS)] - for the Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

CRIMINAL LAW AND PROCEDURE - ARMED ROBBERY:- Conviction for - Whether mandatory to base on evidence of eye-witness.

CRIMINAL LAW AND PROCEDURE - ARMED ROBBERY:– Offence of - Prosecution - What must be proven to establish.

CRIMINAL LAW AND PROCEDURE - CONFESSIONAL STATEMENT:- Corroborative evidence of - Whether mandatory before basing conviction thereon.

**PRACTICE AND PROCEDURE ISSUES**

EVIDENCE - CONFESSIONAL STATEMENT:- Corroborative evidence of - Whether mandatory before basing conviction thereon.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The appellant was alleged to have committed armed robbery alongside a co-accused and they were arraigned in the Akwa Ibom State Robbery and Firearms Tribunal, on a one-count charge of armed robbery, contrary to section 1(2)(a) of Armed Robbery and Firearms (Special Provision) Act, 1990.

The prosecution tendered in evidence confessional statement made by the appellant. The accused persons were found guilty and sentenced accordingly.

Dissatisfied, the appellant appealed to the Court of Appeal where his conviction was affirmed. Dissatisfied still, he appealed to the Supreme Court, contending that the lower court erred in affirming his conviction when the respondent failed to prove his guilt as required.

**DECISION(S) APPEALED AGAINST**

The Court of Appeal entered judgment, affirming the decision of the Akwa Ibom State Robbery and Firearms Tribuna that convicted and sentenced the 1st accused and the Appellant to death for the offence of armed robbery. Dissatisfied, the Appellant appealed to the Supreme Court.

**ISSUE(S) FOR DETERMINATION ON APPEAL**

*BY APPELLANT:*

“Given that, in all aspects, the evidence adduced by the prosecution was materially contradictory, as the court below right in coming to the conclusion that the prosecution discharged the legal burden on it of proving the guilt by the appellant beyond reasonable doubt? (Proof beyond reasonable doubt issue).”

*BY RESPONDENT:*

“Whether the court below was right in affirming the judgment of the trial court and dismissing the appeal in the evidence on record before the court.”

**MAIN JUDGMENT**

MUHAMMAD JSC (DELIVERING THE LEAD JUDGMENT):

The appellant was charged, tried and convicted along with one Ekong Akpan Thomas, on a lone count of armed robbery contrary to section 1(2)(a) of the Armed Robbery and Firearms (Special Provision) Act, 1990 at the Akwa Ibom State Robbery and Firearms Tribunal, sitting at Ikot Ekpene. The appellant was the 2nd accused at the trial tribunal. To establish its case, the prosecution called five witnesses, PW1-PW3; the victims of the criminal conduct of the two accused persons and PW4 and PW5, police officers, who investigated the case against the appellant and his co-traveller in crime. The prosecution also tendered and relied on ten exhibits, A, B, C, D, E, F, G, G1, G2 and H in fashioning their case. The appellant gave evidence in his defence. He called no other witness. At the end of the trial, the trial tribunal in a considered judgment delivered on 28 May 1999, the 1st accused and the appellant were convicted as charged and sentenced to death.

Dissatisfied with the tribunal’s judgment, the appellant appealed on a single ground vide a notice dated 4 December 2013 to the Court of Appeal, Calabar Division, hereinafter referred to as the lower court, which judgment of 4 December 2014 affirmed appellant’s conviction and sentence by the trial court. Still aggrieved, the appellant has further appealed to this court on a notice containing two grounds dated and filed on 5 January 2015.

In his brief settled by Godwin Omoaka and deemed filed on 30 March 2017, the appellant has distilled a lone issue on the basis of which he requires the appeal to be determined. The issue reads:

“Given that, in all aspects, the evidence adduced by the prosecution was materially contradictory, as the court below right in coming to the conclusion that the prosecution discharged the legal burden on it of proving the guilt by the appellant beyond reasonable doubt? (Proof beyond reasonable doubt issue).”

The similar issue formulated in the respondent’s brief settled by the Uwemedimo Nwoko Esq., the Hon. Attorney-General of Akwa Ibom State and deemed filed on 30 March 2017 too reads:

“Whether the court below was right in affirming the judgment of the trial court and dismissing the appeal in the evidence on record before the court.”

On the lone issue, learned appellant counsel submits that the trial court has the duty of ensuring that the prosecution had discharged the burden of proof of the offence against the appellant beyond reasonable doubt. The lower court’s finding at page 57 of the record of appeal in affirming the trial Court’s decision that the respondent has established the essential ingredients of the offence against the appellant is not sustainable. The evidence of PW1, PW2 and PW3 on the fact of the occurrence of the armed robbery for which the appellant is convicted, it is submitted, falls short of the standard of proof the law demands.

Not only was the armed robbery not reported on the date it took place, it is further submitted, the prosecution has failed to situate the appellant at the scene of the robbery. There is violent discrepancies in the evidence of PW1, PW2 and PW3 as to the date the offence took place making such evidence on the fact unreliable.

Most importantly, learned appellant’s counsel further argues, the state of alertness of the victims of the robbery, PW1 PW2 and PW3 as well as visibility at the scene, submits learned counsel, makes the identification of the appellant at the scene suspicious.

Poor visibility at the vicinity and time of the offence, submits learned counsel, made identification of the appellant impossible. The appellant, it is submitted was simply pin-pointed to the witnesses rather than paraded for them to identify him. Learned counsel relies on decisions in Effiong v. State (1998) 8 NWLR (Pt. 562) 362 at page 372, (1998) 5 SCNJ 158, (1998) LPELR - 1028 (SC) 8; Basil Akpa v. State (2008) All FWLR (Pt. 420) 644, (2008) 14 NWLR (Pt.1106) 72, (2008) 163 LRCN 186 at page 295; Fatai Olayinka v. State (2007) All FWLR (Pt. 373) 163, (2007) 2 NSCC 505, (2007) 9 NWLR (Pt. 1040) 561.

Lastly, learned appellant’s counsel contends, there is no evidence outside appellant’s purported confessional statement as obtained on his arrest almost four years after the date of the robbery. The law, it is submitted, prescribes that the conviction of the appellant proceeds only where evidence corroborative of the confessional statement is available. In the circumstance, therefore, learned counsel submits, the conviction by the trial court and its affirmation by the lower court cannot persist. The confessional statement of the 1st accused the two courts relied on against the appellant does not avail the prosecution. A confession, it is contended is only relevant against its maker. It does not, it is submitted, bind a co-accused. In any event, exhibit H, the appellant’s extra-judicial statement is not confessional. Relying inter-alia on R v. Skyes (1913) 8 CAR 233 at pages 236-237; Dawa v. State (1980) 1 NLR 226, (1980) 8-11 SC 236 at page 259; Kim v. State (1991) 2 NWLR (Pt. 175) 622 at page 635; Yesufu v. State (2011) 18 NWLR (Pt. 127) 8 and Ikpasa v. Attorney-General, Bendel State (1981) 9 SC 7, (1981) NSCC 300, learned appellant’s counsel submits that the findings of the two lower courts on the guilt of the appellant are perverse. He urged that the lone issue in the appeal be resolved against the respondent and that the appeal be allowed on the further authority of Oguonzee v. State (1998) 5 NWLR (Pt. 551) 521, (1998) 58 LRCN 3512, (1998) 4 SC 110 at page 124.

In reply, learned respondent’s counsel concedes that by section 138(1) of the Evidence Act, it is bound to establish beyond reasonable doubt that a robbery had taken place and that the appellant while armed participated in the robbery. The evidence on record learned counsel submits, establish all the essential ingredients of the offence for which the appellant was not arrested at the scene of the offence or the discrepancy, if any, as to the date of the robbery, it is contented, are not fatal to the prosecution’s case. The case of Akpan v. State (2008) Vol. 163 LRCN 186 at page 295 is cited by counsel in support.

The prosecution witnesses, it is submitted are consistent in their evidence and the discrepancy, if any, does not go to the root of the evidence. Appellant’s voluntary confessional statement, exhibit H, it is submitted, clearly confirms the evidence of the prosecution witnesses. The appellant cannot, it is contended, challenge the prosecution’s failure to tender the statements of its witnesses. If the defence has the need for the statements to make out its case, it is for it to seek and tender same. The defence, it is submitted, can neither complain nor blame the respondent. In their evidence, PW1 and PW2, it is submitted, remain very firm that the robbers that came to their house not only pointed a gun at them but also stabbed PW1 with a knife. This evidence, it is urged, establishes the two essential ingredients of armed robbery. Exhibit H, appellant’s confessional statement, it is submitted further establishes the entire ingredients of the offence against him. There is no evidence stronger that a person’s admission of what he did. The identification parade canvassed by the appellant, it is further argued, is unnecessary.

The law allows appellant’s conviction on his own admission. It only makes corroborative evidence to the confession desirable, and not mandatory. Relying on Agboola v. State (2013) All FWLR (Pt. 704) 139, (2013) vol. 224 LRCN (Pt. 1) 159 at page 166, (2013) 11 NWLR (Pt.1366) 619; Ogoala v. State (1991) 2 NWLR (Pt. 175) 509 at page 523, (1991) 3 SCNJ 61, (1991) 1 NSCC 336, (1991) 3 SC 80 and Ebienwe v. State (2011) vol. 201 LRCN 220 at page 223, learned respondent’s counsel urged the resolution of the lone issue against the appellant and the dismissal of the appeal.

Now, the very narrow issue the appeal raises is whether given the facts on record, it is also safe for this court to rely on appellant’s extra-judicial confessional statement to further affirm his conviction. Parties herein agree and rightly too, for authorities on the principle are legion, that to successfully establish the charge of armed robbery against the appellant, the respondent has to prove beyond reasonable doubt:-

(i) That there was infact a robbery;

(ii) That the robbery was an armed robbery;

(iii) That the appellant took part in the robbery.

See State v. Isiaka (2013) LPELR-20521 (SC), (2014) All FWLR (Pt. 729) 1053; Afolalu v. State (2010) All FWLR (Pt. 538) 812, (2010) 16 NWLR (Pt. 1220) 584; Adebayo v. State (2014) All FWLR (Pt. 743) 1994, (2014) 12 NWLR (Pt. 1422) 613, (2014) LPELR-22988 (SC) and Suberu v. State (2010) All FWLR (Pt. 520) 1263, (2010) 5 SCM 215, (2010) 8 NWLR (Pt. 1197) 586.

In the instant case, appellant’s strongest wicket lies in the third ingredient of the offence, which his counsel strongly contends that the lower court has proceeded to affirm the trial court’s finding thereon, inspite of the failure of the prosecution to establish same. It cannot be denied the appellant, that the prosecution’s failure to link him to the robbery he is charged and convicted for will be fatal to the concurrent findings of the two courts below. On what then, it may be asked, did the lower courts rely in its affirmation of the trial court’s finding on the third ingredient of the offence and conviction of the appellant? The answer is to be found at pages 185-187 where, after reviewing the evidence of PW1 in the course of its judgment, the courts held as follows:-

“The question is whether PW1 could have clearly recognised the appellant in this state, four years after the incident. It would appear doubtful in my opinion.”

On PW3, PW1’s wife, the other eye witness to the armed robbery, the lower court proceeded at page 187 of the record thus:

“PW3 said in evidence-in-chief that there was a lit lantern in the room which enabled her to see who came into the room. Under cross-examination at page 25, she said:

‘...in my statement I described to the police that one of the robbers was tall with an open teeth while the other two were short.’

But in her statement made on 24 January 1996, which was marked exhibit C, she had stated thus:

‘... I saw three men armed with short guns... I can identify that one who cut my husband with machete on his right hand if seen...’

This implies that the robber she could easily identify was the one who cut her husband with a machete.

The appellant was not arrested until about four years after this incident but PW3 said at page 26:

‘.. I was shown the 2nd accused person in the cell and I recognised him. It was stated in my statement that I identified him.

It is not clear if the appellant was the one who cut her husband with a machete.” (Italics supplied for emphasis).

The court then rightly resolved thus:-

“I would agree with Mr. Omoaka for the appellant that it would be wise to exercise caution in convicting an accused person upon such fluid identification.

But the trial court also considered exhibit G and H which were confessional statements from the 1st accused person and from the appellant respectively.” (Italics supplied for emphasis).

It is a given principle that in establishing the offence of armed robbery the prosecution’s evidence need not necessarily be the direct evidence of an eye-witness, as same could also be either circumstantial evidence or the confessional statement of the accused. See Onyenye v. State (2012) All FWLR (Pt. 643) 1810, (2012) 15 NWLR (Pt. 1324) 586, (2012) LPELR - 7866 (SC); Lori v. State (1980) 8 - 11 SC 81.

The appellant in exhibit H stated as follows:

“I know one Ekong Akpan Thomas, he is from Etinam living at No. 3 Adoha Akpo Street, Etinam. I also know one Aniedi Sampson Bassey, he is my in-law and I know Ekong Akpan Thomas through Aniedi Sampson Bassey alias Ikpe and Ekong Akpan Thomas were my partners in crime, we use to steal goats. And we also went to Oniong Iman Village together and rob the owner of the house and gave him a machete cut on his hand. We were the people who stole his money, his clothes in a bag, one bicycle and a radio. Yes, I was together with Ekong Akpan Thomas and Aniedi Sampson Bassey alias ‘Ikpe’ at Etinan Motor Park on 23 January 1996 when one boy identified his polo shirt which was one of the loots given to Ekong Akpan Thomas...”

On the foregoing, the court at page 196 of the record enthused as follows:-

“The evidence of PW5 to the effect that exhibit H and exhibit G was both voluntarily made was not challenged. The evidence of PW1 and PW3 that the long sleeved polo shirt, exhibit E, was part of the items stolen by the armed robbers who invaded their home on 17 December 1995 was not challenged. The evidence that exhibit E was not the same shirt worn by the 1st accused person on 23 January 1996 at Etinan Motor Park was not challenged. In fact the 1st accused admitted this fact in exhibit G, while the appellant admitted this fact in exhibit H... The tribunal was right to have accepted and acted on exhibit H.”

I cannot agree more with the foregoing unassailable finding of the lower court. Where as in the instant case, the appellant in exhibit H adopts the content of exhibit G, the two courts are entitled to rely on the latter in addition to the former against the appellant. See State v. Onyeukwu (2004) All FWLR (Pt. 221) 1388, (2004) 14 NWLR (Pt. 893) 340 and Aikhadueki v. State (2013) LPELR-20906 (SC).

I agree with learned appellant’s counsel that by virtue of a chain of decisions of this court, see R v. Skyes (supra) Dawa v. State (supra) and Ikpasa v. State (supra), it is desirable to base the appellant’s conviction on further evidence outside his confession, the requirement for such corroborative evidence is however not mandatory. The principle still is that the court, where the confession is direct, positive and unequivocal and is properly proved, may convict an accused solely on such a confession. As learned respondent’s counsel rightly submitted, there is no evidence stronger than a person’s admission of the state of affairs: See Stephen v. State (supra); Oguonzee v. State (supra) and Ogoala v. State (1991) 2 NWLR (Pt. 175) 509, (1991) 3 SCNJ 61, (1991) 1 NSCC 336, (1991) 3 SC 80. In the case at hand, the concurrent findings of the two lower courts that proceeded not only on the basis of exhibit H, appellant’s voluntary confessional statement admitted without objection, but on the basis of exhibit G as well, is impeccable. Not being perverse, the findings must persist.

It is for the foregoing, that I resolve the lone issue against the appellant and dismiss his unmeritorious appeal. The judgment of the lower court is hereby accordingly affirmed.

**RHODES-VIVOUR JSC:**

I read a draft copy of the lead judgment delivered by my learned brother, Muhammad JSC. I agree with his lordship that there is no merit in this appeal. The appeal is hereby dismissed.

**NWEZE JSC:**

My lord, Dattijo Muhammad JSC obliged me with the draft of the lead judgment just delivered now. I agree with the reasoning and conclusion.

**SANUSI JSC:**

I read before now, the judgment just delivered by my learned brother, Musa Dattijo Muhammad. I am in entire agreement with his reasoning and conclusion that this appeal lacks merit. I too accordingly dismiss it.

**GALINJE JSC:**

I have had the privilege of reading in draft, the judgment just delivered by my learned brother, Musa Dattijo Muhammad JSC and I agree with the reasoning contained therein and the conclusion arrived thereat. I have nothing useful to add as my learned brother has exhaustively considered all the issues submitted for determination of this appeal.

For the same reasons ably articulated by my learned brother, which I adopt as mine, this appeal shall be and it is hereby dismissed. The judgment of the lower court is hereby affirmed.

Appeal dismissed